

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street, NE, Suite 4150
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MONUMENTAL CITY REALTY CORP.
Respondent.

Case No.: DH-I-07-G100983
DH-I-07-G101154

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Code, 2001 Ed. §§ 2-1801.01 - 1802.05, and 21 District of Columbia Municipal Regulations (“DCMR”) 707.11, which requires waste containers be maintained according to certain standards.¹ On March 23, 2007, the Government served Notice of Infraction (“NOI”) G100983 charging Respondent, Monumental City Realty Corp., with failing to properly maintain its waste containers at 1433 Spring Rd., N.W. (“Property”). Respondent’s tenant at the Property is the Coalition for the Homeless. The Government alleged that the violation occurred on March 22, 2007. The Government seeks a \$500 fine.

¹ 21 DCMR 707.11 reads:

Commercial waste containers shall be constructed of heavy gauge metal with tightly-fitting lids constructed of either heavy gauge plastic or metal. Waste container lids shall be kept closed at all times other than when the container is being filled or emptied. Waste container lids shall be free of large gaps, cracks or holes. The area where the waste container is stored shall be kept free of spilled waste at all times. If the waste container is equipped with a drain plug, the plug shall be constructed of heavy duty plastic or metal and shall be kept in the drain hole until the filled container is transported to its ultimate destination for emptying and disposal of its contents.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service. *See* D.C. Code, 2001 Ed. § 2-1802.02(e) (establishing fifteen days as the requisite period of time for filing of an answer to a Notice of Infraction); *see also* D.C. Code, 2001 Ed. § 2-1802.05 (allowing five days additional time to the period in which respondent may answer when service is by mail). Accordingly, this administrative court issued an notice finding Respondent in default and subject to the statutory penalty required by D.C. Code, 2001 Ed. §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). The notice also required the Government to serve a second Notice of Infraction.

The Government served a second Notice of Infraction on May 18, 2007. Respondent filed an answer with a plea of Deny on June 12, 2007. I held a hearing on August 9, 2007. Inspector Donald Goodman represented the Government and testified on its behalf. Arthur Glover, Director of the Coalition for the Homeless, represented Respondent and testified on its behalf. During the hearing, I admitted into evidence the Government's exhibits 100 and 101. Based on the evidence presented at the hearing and the entire record in this matter, I make the following findings of fact and conclusions of law.

II. Findings of Fact

1. Respondent owns and operates a commercial building at 1433 Spring Rd., N.W.
2. On March 22, 2007, Inspector Donald Goodman personally inspected the Property. During his inspection, Inspector Goodman found two trash containers that did not have lids. One trash dumpster was behind 1433 Spring Rd., N.W. and one trash dumpster was behind 1437 Spring Rd., N.W. Exhibit 101. Given the proximity of the trash containers to each other, it was very difficult for Inspector Goodman to ascertain whether the trash containers belonged to 1433

Spring Rd., or 1437 Spring Rd., or both. Inspector Goodman, believing both dumpsters belonged to 1433 Spring Rd., wrote NOI G100983 for one of the improperly maintained dumpsters (the photograph with this NOI actually depicted the dumpster that is behind 1437 Spring Rd.) (exhibit 101), and NOI G100984 for the other dumpster (the photograph with this NOI correctly depicted the trash container behind 1433 Spring Rd.). The Government served both NOIs on Respondent and listed 1433 Spring Rd. as the address of the violation. The Coalition for the Homeless paid the fine associated with NOI G100984.

3. The NOI was served on Respondent at its address in Rivera Beach, MD. By the time Respondent processed NOI G100983 and forwarded it to the Coalition for the Homeless, the period for submission of a timely plea had expired. After receiving the NOI, the Coalition for the Homeless had its trash contractor replace the dumpster behind 1433 Spring Rd. and wrote Respondent a letter seeking assurances that Respondent will timely forward all NOIs or other correspondence concerning the Property.

III. Conclusions of Law

The Government has not established by a preponderance of the evidence that Respondent failed to maintain properly its trash containers at the Property in violation of 21 DCMR 707.11. It is clear from the testimony of Inspector Goodman and Mr. Glover that the trash container used by the Coalition for the Homeless did not have lid and could not otherwise be closed. It is also clear that this dumpster was properly the subject of NOI G100984, but not G100983 (the pending NOI). The Coalition for the Homeless has paid the fine imposed under NOI G100984. Therefore, I conclude Respondent is not liable for NOI G100983.

The Civil Infractions Act, D.C. Code, 2001 Ed. §§ 2-1802.02(f) and 2-1802.05, provides that there must be “good cause” for a respondent’s failure to answer a Notice of Infraction within 20 days of the date of service by mail. If there is not, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code, 2001 Ed. §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If the respondent fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Code, 2001 Ed. §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). The Coalition for the Homeless has explained that it did not receive the NOI, because it was served on Respondent at its office in Rivera Beach, MD. The Coalition for the Homeless has written Respondent seeking assurances that Respondent will forward timely all NOIs or other correspondence concerning the Property. I accept the explanation for the failure to respond timely and conclude that Respondent had good cause for that failure. Accordingly, I dismiss G101154 and the statutory penalty of \$500.

IV. ORDER

Based on the above findings of fact and conclusions of law, and the entire record in this matter, it is this 11th day of September 2007

ORDERED that Respondent, Monumental City Realty Corp., is **NOT LIABLE** for violating 21 DCMR 707.11, as alleged in NOI G100983; it is further

ORDERED that NOI G100983 and NOI G101154 are **DISMISSED WITH PREJUDICE**; it is further

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

September 11, 2007

 /SS/
Jesse P. Goode
Administrative Law Judge